IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.432 OF 2005

M/s.Shimoga Dies & Tools ....Petitioner

V/s.

M/s.Western Refrigeration Pvt.Ltd. ....Respondent

Mr.P.N. Ganwani i/b M/s.L.C. Tolat & Co. for the Petitioner.

Mr.Cyrus Ardeshir i/b M/s.Vigil Juris for the Respondent.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH FEBRUARY, 2006.

P.C. :

1. This is a Petition under Sections 433 and 434 of the Companies Act for winding up the Respondent - Company.

2. It is not even the Petitioner's case that the amount claimed was due to the Petitioner. In fact the Petitioner's case is that two orders dated 4.6.2004 and 2.9.2004 for supply of certain goods were placed by the Company on Shimagao Tools Pvt.Ltd. The proforma invoice and the final invoice in respect of the goods sold and delivered were raised by Shimagao Tools Pvt.

Ltd. The receipt of the goods was acknowledged by the Company on the challan issued to Shimagao Tools Pvt. Ltd.

3. The Petitioner's further case is that the amounts were due and payable by the Company to Shimagao Tools Pvt. Ltd. The aforesaid documents were annexed to the affidavit-in-rejoinder.

4. Exhibit "A" to the Petition is a letter dated 27.1.2005 by Haikawa Industries Pvt. Ltd. the principal of the Respondent Company to the Petitioner enclosing therewith a cheque in the sum of Rs.10,00,000/- drawn by the Respondent Company in favour of the Plaintiff. Mr.Ganwani, the learned counsel appearing on behalf of the Petitioner, stated that the cheque though drawn in the name of the Petitioner was actually for and on behalf of Shimagao Tools Pvt. Ltd. It is not and has never been the Petitioner's case that the debt was assigned by Shimagao Tools Pvt. Ltd. to the Petitioner.

5. The only basis for the Petitioner and not Shimagao Tools Pvt. Ltd. filing this Petition is, as stated in paragraph 6(i) of the Petition, that Shimagao Tools Pvt. Ltd. is a company under the control of the

partners of the Petitioner. That by itself however, would not entitle the Petitioner to enforce a claim of Shimagao Tools Pvt. Ltd.

6. The Petitioner has therefore, no cause of action against the Respondent Company. The cause of action, if any, is that of Shimagao Toots Pvt. Ltd.

7. On this limited ground alone, the Petition is dismissed.